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No. 06-911

Supreme Court, U.S.
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In The

Supreme Court of the United States

MICHAEL J. BARNES, JR.,

Petitioner,

v.

KIM KRISTINE JEUDEVINE,

Respondent.

On Petition For A Writ Of Certiorari To The Michigan Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

I. Whether the Petitioner has presented compelling reasons to grant the Petition, where the Michigan Supreme Court's Opinion, interpreting Michigan's Paternity Act, MCL 722.711 et seq., to prohibit standing to a claimed putative father to bring a paternity complaint, where there had been no prior judicial determination that the minor child was a child born "out of wedlock," does not conflict with a decision of this Court, a decision of another state court of last resort or of a United States court of appeals.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, Respondent, Kim Kristine Jeudevine, is an individual, with no corporate affiliations for which further disclosure would be required.

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INTRODUCTION

Petitioner has failed to present "compelling reasons" to grant his Petition for a Writ of Certiorari ("Petition"). *See* Sup. Ct. R. 10. Specifically, Petitioner fails to demonstrate that the Michigan Supreme Court's July 26, 2006 Opinion ("Opinion"; Pet.App. A12-A39)[1] and its September 14, 2006 Order Denying Motion for Rehearing, Reconsideration and Other Relief ("Order"; Pet.App. A11)[2] are in conflict with a decision of this Court, another state court of last resort, or a United States court of appeals.[3] Further, Petitioner has failed to demonstrate that the Michigan Supreme Court decided an important federal question that has not been settled by this Court. *See* Sup. Ct. R. 10(a)-(c). Therefore, the Petition should be denied.

From the face of the Petition, it is not altogether clear what specifically Petitioner alleges about the Michigan Supreme Court's Opinion and subsequent Order, interpreting the Michigan Paternity Act, Mich. Comp. Laws 722.711 et seq. ("the Paternity Act"), which violates Petitioner's constitutional rights. Petitioner seemingly contends that the Opinion and Order, denying standing to a putative father to bring a paternity complaint, where there had been no prior judicial determination that the minor child was a child born "out of wedlock," violates his procedural and substantive due process rights under the

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[1] The Opinion is reported at 475 Mich. 696, 718 N.W.2d 311 (2006).

[2] The Order is reported at 477 Mich. 1201, 720 N.W.2d 748 (2006).

[3] Petitioner has failed to cite a single case from a court other than the U.S. Supreme Court in alleged support of his petition. As such, this Brief in Opposition will address only those prior decisions of this Court which may impact its consideration of the Petition for Writ of Certiorari.

Fifth and Fourteenth Amendments and his equal protection rights under the Fourteenth Amendment.

Such federal constitutional arguments were first raised by the Petitioner in his Motion for Rehearing, Reconsideration and Other Relief ("Motion for Rehearing"; Pet.App. A56-A66), filed after the Opinion had been issued. The Motion for Rehearing makes rather general references to these constitutional due process and equal protection arguments and then selectively draws upon language in a few of this Court's prior decisions on due process, fundamental liberty interests and equal protection in alleged support of Petitioner's position. The extent to which this represents a cognizable constitutional challenge to the Paternity Act, sufficient to constitute a basis for this appeal, may be subject to some debate.[4]

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[4] Clearly, "[a] party may not preserve a constitutional challenge by generally invoking the Constitution in state court and awaiting review in this Court to specify the constitutional provision it is relying upon." *Bankers Life and Casualty Company v. Crenshaw*, 486 U.S. 71, 77 (1988). In considering the sufficiency of Petitioner's state court challenges preserving these federal constitutional issues for further appeal under 28 U.S.C. § 1257, this Court's more recent holdings "have treated [its previously used] so-called 'not-pressed or passed upon below' rule as merely prudential restriction." See *Illinois v. Gates*, 462 U.S. 213, 218 (1983); *e.g., Crowell v. Randell*, 10 Pet. 368 (1836); *McGoldrick v. Compagnie Generale*, 309 U.S. 430 (1940); and *State Farm Mutual Automobile Insurance Co. v. Duel*, 324 U.S. 154 (1945).

Such prudence has been guided, or restricted, by "first, comity to the States, and second, a constellation of practical considerations, chief among which is our own need for a properly developed record on appeal." *Bankers Life*, 486 U.S. at 79.

Applying such discretion, "prudence" suggests that this Court should decline review of this case. In so declining, this Court would permit "a number of less intrusive and possibly more appropriate, resolutions," including consideration of these constitutional questions by the state legislature or courts, "while any ultimate review of the

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Minimally, however, it is clear that the lower court record, inclusive of any state court opinion on such constitutional issues, is very limited. Both the Opinion and Order are silent in regards to any substantive discussion concerning Petitioner's constitutional arguments. For purposes of the balance of this Brief in Opposition, while not conceding the issue, Respondent presumes that the Petitioner has previously raised federal questions regarding application of Michigan's Paternity Act in the context of his asserted procedural and substantive due process rights and equal protection rights, necessary to invoke jurisdiction over this appeal pursuant to 28 U.S.C. § 1257.

STATEMENT OF THE CASE

On July 11, 1996, Respondent, Kim Kristine Jeudevine, formerly Kim Kristine Charles ("Respondent"), married James Vincent Charles. Respondent and Mr. Charles separated in May, 1998. Mr. Charles filed for divorce in the Kalamazoo County Circuit Court on July 9, 1998. The complaint for divorce was personally served on Respondent on August 12, 1998, approximately three (3) months after Respondent and the Petitioner started living together.

Before being served with the summons and complaint for divorce, Respondent discovered that she was pregnant. She never disclosed this fact to her husband, prior to the entry of the default Judgment of Divorce. It is undisputed that the child was conceived during the Charles' marriage.

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question in this Court will gain the benefit of a well-developed record and a reasoned opinion on the merits." *Id.* at 79-80.

Respondent never answered the divorce complaint, nor appeared before the Kalamazoo County Circuit Court. A default Judgment of Divorce, entered on November 2, 1998, which stated, in part, "it further appearing that no children were born of this marriage and none were expected." (Pet.App. A46-A48) On February 26, 1999, Respondent gave birth to a son.

Respondent and the Petitioner stopped living together in the summer of 2003. Thereafter, Petitioner filed a Complaint for Custody, which was dismissed by the Van Buren County Circuit Court. Petitioner, thereafter, filed a Motion to Intervene, Motion for Relief from Judgment, and Motion for a *Serafin* hearing in the Charles' divorce case in Kalamazoo County Circuit Court. These consolidated motions were also dismissed. No appeals were taken from these dismissals.

Petitioner, then, filed a complaint to establish paternity over the minor child, under the Paternity Act in the Kalamazoo County Circuit Court. After motion, on November 26, 2003, the Kalamazoo County Circuit Court dismissed the complaint. The Petitioner appealed to the Michigan Court of Appeals, which ultimately reversed the Kalamazoo County Circuit Court, in an unpublished opinion, holding that the Petitioner did have standing to bring an action under the Paternity Act.

Respondent, thereafter, filed Application for Leave to Appeal with the Michigan Supreme Court.[5] The Michigan Supreme Court, after oral argument, issued the Opinion, reversing the Michigan Court of Appeals, holding that the

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[5] The Application for Leave to Appeal was granted, as reported at *Barnes v. Jeudevine*, 474 Mich. 1056, 708 N.W.2d 444 (2006).

Petitioner did not having standing to bring an action under Michigan's Paternity Act, where the default divorce judgment did not constitute an affirmative finding by clear and convincing evidence that the minor child was not, in fact, a child of the Charles' marriage, or a child "born out of wedlock." Petitioner's Motion for Rehearing was also denied by Order of the Michigan Supreme Court.

REASONS FOR DENYING THE PETITION

The Michigan Supreme Court's opinion held that the Petitioner lacked standing to file a Complaint for Paternity under the Paternity Act, because there had been no prior judicial determination that the minor child in question was a child born "out of wedlock." Relative to this Court's past procedural and substantive due process and equal protection analysis and holdings, the Michigan Supreme Court's holding presents no new issues to this Court. Contrary to the Petitioner's assertion, the Michigan Supreme Court's decision conforms with precedent of this Court and does not conflict with another state court of last resort or any United States court of appeals. Further, the Petitioner has failed to demonstrate that the Michigan Supreme Court decided an important federal question that has not been settled by this Court.

A. The Petitioner Has Failed to Establish a Compelling Reason To Grant His Petition, Where the Michigan Supreme Court Opinion Denying Petitioner Standing to Bring a Paternity Action Was Not a Denial of Procedural Due Process.

In the latest of a series of opinions addressing Michigan's long-held "presumption of legitimacy" and a claimed putative father's standing to file a complaint for paternity under the Paternity Act, the Michigan Supreme Court correctly held that the Petitioner lacked standing to initiate such a complaint.[6] Writing for the majority, in *Barnes v. Jeudevine*, 475 Mich. 696, 718 N.W.2d 311 (2006), Justice Elizabeth Weaver stated:

> "The Paternity Act, MCL 722.711 et seq., confers on the circuit court jurisdiction over proceedings involving the determination of a child's paternity. One purpose of the act relevant to this case is to assure, for the sake of the child, that the child's legitimacy will not be decided by mere casual inference, but only after specific statutory procedures are followed. To this end, the act provides that a mother, a father, or in certain circumstances, the Department of Human Services, may bring an action in circuit court to establish paternity of a child, if that child is alleged to have been 'born out of wedlock.' MCL 722.714.
>
> "The Paternity Act defines '[c]hild born out of wedlock' as

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[6] *See Egbert v. Greenwalt*, 44 Mich. 245, 6 N.W. 654 (1880); *People v. Case*, 171 Mich. 282, 137 N.W. 55 (1912); *Serafin v. Serafin*, 401 Mich. 629, 258 N.W.2d 461 (1977); *Girard v. Wagenmaker*, 437 Mich. 231, 470 N.W.2d 372 (1991); and *In Re KH*, 469 Mich. 621, 677 N.W.2d 800 (2004).

> 'a child begotten and born to a woman who was not married from the conception to the date of the birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage. [MCL 722.711(a).]'
>
> "Thus, to establish that the child was born out of wedlock, plaintiff must prove that either (1) the child was not born or conceived during the mother's marriage, or (2) though the child was born or conceived during a marriage, a court has determined that the child was not issue of the marriage."

Barnes, 475 Mich. at 702-703.

Noting that it was undisputed that the minor child was conceived during Ms. Jeudevine's marriage, the Michigan Supreme Court concluded that in order for the Petitioner to proceed with his complaint he must establish that a court "has determined" that the minor child was not issue of that marriage. "[A] court determination under MCL 722.711(a) that a child is not 'issue of the marriage' requires that there be an affirmative finding regarding the child's paternity in a prior legal proceeding that settled the controversy between the mother and the legal father." *Barnes*, 475 Mich. at 705.

Barnes further held that a statement in the default judgment of divorce, to wit: "it further appearing that no children were born of this marriage and none were expected," did not constitute such a prior judicial determination concerning the minor child's "out of wedlock" status.

> "In short, there have been no legal actions addressing the subject child's paternity. The circuit court stated in the judgment of divorce merely

> that it appeared no children were born or expected of the marriage. The court's statement does not support a conclusion that 'the court has determined [the child] to be a child born or conceived during a marriage but not the issue of the marriage.' MCL 722.711(a). This conclusion is underscored by the requirement that a court find clear and convincing evidence that a child is not the issue of a marriage to overcome the presumed legitimacy of a child born or conceived during a marriage. *In Re KH*, *supra* at 634, n. 24, 677 N.W.2d 800."

Barnes, 475 Mich. at 706. As such, the *Barnes* majority concluded that the Petitioner did not have standing to bring his Paternity Action.

Petitioner, now, erroneously claims that the Michigan Supreme Court's denial of his standing to file the paternity complaint violates the requirements of procedural due process under the Fifth and Fourteenth Amendments to the U.S. Constitution. Specifically, he argues that the requirements of procedural due process prevent the State of Michigan from terminating an "alleged" liberty interest[7] in his relationship with the minor child, without affording him an opportunity to demonstrate his paternity in an evidentiary hearing. Borrowing from the majority's language in *Michael H. v. Gerald D.*, 491 U.S. 110, 119 (1989),[8] "this

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[7] More substantive discussion concerning the Petitioner's alleged "liberty" interest is set forth below in subsection B.

[8] The relevant facts in *Michael H.* are very similar to the facts in the case at bar. In *Michael H.*, a claimed putative father (which blood tests had confirmed had a 98.07% probability of paternity), who had an established parental relationship with the minor child, filed a filiation action in Los Angeles Superior Court to establish paternity and his rights to visitation. The minor child's mother was married to another

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claim derives from a fundamental misconception of the nature" of the Paternity Act and the presumption of legitimacy upon which it is based.

The Michigan Supreme Court has emphasized and re-emphasized the importance of the "presumption of legitimacy" as a guiding principle of family preservation and integrity in Michigan for more than 125 years. *In Re KH*, 469 Mich. 621, 677 N.W.2d 800 (2004) holds:

> "The presumption that children born or conceived during a marriage are the issue of that marriage is deeply rooted in our statutes and case law. This presumption of legitimacy . . . has been consistently recognized throughout our jurisprudence, and can be overcome only by a showing of clear and convincing evidence. In *Case*, this Court stated:

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man at the time of her child's birth. The mother had previously had an adulterous affair with the claimed putative father. In ruling on a motion for summary judgment, brought by the mother's husband, the Los Angeles Superior Court dismissed the filiation complaint because California law provides, in part, "the issue of a wife cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage." Cal.Evid.Code Ann. § 621(a). In short, this presumption may only be rebutted by the husband or the wife, with blood tests, but only if a motion for such tests is made within two years from the child's birthdate, either by the husband, or if the natural father has filed an affidavit acknowledging paternity. Cal.Evid.Code Ann. § 621(c) and (d). The Court of Appeal affirmed the dismissal and denied petitions for rehearing. The California Supreme Court declined discretionary review and appeal was made to the U.S. Supreme Court, alleging, between the putative father and child, various violations of the Due Process Clause and Equal Protection Clause. The U.S. Supreme Court, in a plurality opinion, found no violations of either the Due Process Clause or the Equal Protection Clause (as to the minor child only) and the judgment was affirmed.

> "'The rule that a child born in lawful wedlock will be presumed to be legitimate is as old as the common law. It is one of the strongest presumptions in the law. The ancient rule made the presumption conclusive, if the husband was within the four seas. The modern one permits the presumption to be overcome, but only upon proof that is very convincing.'
>
> "By requiring a previous determination that a child is born out of wedlock, the Legislature has essentially limited the scope of parties who can rebut the presumption of legitimacy to those capable of addressing the issue in a prior proceeding – the mother and the legal father. As this Court noted in Girard, paternity claims generally arise during divorce or custody disputes, and the Legislature contemplated 'situations where a court in a prior divorce or support proceeding determined that the legal husband of the mother was not the biological father of the child.' If the mother or legal father does not rebut the presumption of legitimacy, the presumption remains intact, and the child is conclusively considered to be the issue of the marriage despite lacking a biological relationship with the father."

The Michigan legislature, also, has repeatedly sought to reinforce the importance of this rebuttable presumption, not only in reference to the Paternity Act, but also in Michigan's Divorce Act, MCL 552.1 et seq., Michigan's Vital Records Act, MCL 333.2824(1) and MCL 333.2824(6), and Michigan's intestacy laws, MCL 700.2114(1)(a). Indeed, "[t]here is no area of law more requiring finality and stability than family law." *Hackley v. Hackley*, 426 Mich. 582, 395 N.W.2d 906 (1986).

This Court's prior decisions have reflected the importance of this principle, as well. Like the majority's conclusions regarding California's Evidence Code § 621 in *Michael H.*, one can only conclude that Michigan's presumption of legitimacy is not a mere rule of evidentiary convenience; it is a substantive rule of law, based on Michigan's long-held social policy favoring preservation of the family unit. Thus, consistent further with *Michael H.*, this Court's review of the Michigan Supreme Court's adherence to this "presumption of legitimacy," whether such presumption is cast as conclusive and irrebuttable *or* merely rebuttable, does not rest on a procedural due process analysis, but on a substantive due process analysis of the "classification and the policy the classification serves." *Michael H.*, 491 U.S. at 121.

Hence, Petitioner has no viable procedural due process claim, and has presented no compelling reason for granting his Petition for Writ of Certiorari. The Petition for Writ of Certiorari should be denied.

B. The Petitioner Has Failed to Establish a Compelling Reason to Grant His Petition, Where the Michigan Supreme Court Opinion Denying Petitioner Standing to Bring a Paternity Action Was Not a Denial of Substantive Due Process.

Petitioner fails to establish a compelling reason to grant his petition, where there is no basis to conclude that the Michigan Supreme Court's denial of standing to him to file a paternity complaint constitutes a denial of substantive due process. In *Michael H.*, under similar facts, this Court held a claimed biological father's relationship with a child, born into an extant marriage, didn't amount to a fundamental liberty interest, traditionally protected by

our society. Accordingly, there was no substantive due process claim. Justice Scalia wrote:

> "It is an established part of our constitutional jurisprudence that the term 'liberty' in the Due Process Clause extends beyond freedom from physical restraint. . . . In an attempt to limit and guide interpretation of the Clause, we have insisted not merely that the interest denominated as a 'liberty' be 'fundamental' (a concept that, in isolation, is hard to objectify), but also that it be an interest traditionally protected by our society. As we have put it, the Due Process Clause affords only those protections 'so rooted in the traditions and conscience of our people as to be ranked as fundamental.' *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934) (Cardozo, J.).
>
> " . . . Thus, the legal issue in the present case reduces to whether the relationship between persons in the situation of Michael and Victoria [his alleged biological daughter] has been treated as a protected family unit under the historic practices of our society, or whether on any other basis it has been accorded special protection. We think it impossible to find that it has. In fact, quite to the contrary, our traditions have protected the marital family against the sort of claim Michael asserts.
>
> "The presumption of legitimacy was a fundamental principle of the common law. H. Nicholas, Adulterine Bastardy 1 (1836). Traditionally, that presumption could be rebutted only by proof that a husband was incapable of procreation or had had no access to his wife during the relevant period. Id., at 9-10 [citations omitted] . . .

" . . . We have found nothing in the older sources, nor in older cases, addressing specifically the power of the natural father to assert parental rights over a child born into a woman's existing marriage with another man. Since it is Michael's burden to establish that such a power (at least where the natural father has established a relationship with the child) is so deeply embedded within our traditions as to be a fundamental right, the lack of evidence alone might defeat his case. But the evidence shows that even in modern times – when, as we have noted, the rigid protection of the marital family has in other respects been relaxed – the ability of a person in Michael's position to claim paternity has not been generally acknowledged . . .

" . . . Moreover, even if it were clear that one in Michael's position generally possesses, and has generally always possessed, standing to challenge the marital child's legitimacy, that would still not establish Michael's case. As noted earlier, what is at issue here is not entitlement to a state pronouncement that Victoria was begotten by Michael. It is no conceivable denial of constitutional right for a State to decline to declare facts unless some legal consequence hinges upon the requested declaration. What Michael asserts here is a right to have himself declared the natural father and thereby to obtain parental prerogatives. What he must establish, therefore, is not that our society has traditionally allowed a natural father in his circumstances to establish paternity, but that it has traditionally accorded such a father parental rights, or at least has not traditionally denied them . . . "

" . . . What counts is whether the States in fact award substantive parental rights to the natural

> father of a child conceived within, and born into, an extant marital union that wishes to embrace the child. We are not aware of a single case, old or new, that has done so. *This is not the stuff of which fundamental rights qualifying as liberty interests are made.*" *Michael H.*, 491 U.S. 121-127. [Emphasis added].

In the case at bar, the legal question becomes whether the relationship between the Petitioner and the minor child has been "treated as a protected family unit under the historic practices of our society, or whether on any other basis it has been accorded special protection." For reasons previously discussed, relative to Michigan's long-held adherence to the presumption of legitimacy as a necessary means to protect the integrity of the family unit, as amplified by this Court's reference to the presumption of legitimacy as "a fundamental principal of the common law," it is impossible to conclude that it has; *e.g., Michael H.*, 491 U.S. at 124.

This conclusion is not altered by consideration of other cases, which Petitioner cites. Petitioner seems to be arguing that a fundamental liberty interest is created by a biological relationship, plus an established parental relationship. Petitioner draws on two prior decisions of this Court, *Stanley v. Illinois*, 405 U.S. 110 (1972) and *Lehr v. Robertson*, 463 U.S. 248 (1983) for alleged support of this position.

In *Stanley*, the Petitioner was an unwed father, whose children on their mother's death, were declared as state wards and placed in guardianship. Such action was taken without affording the Petitioner a hearing. Pursuant to an Illinois statute, children of unmarried fathers, upon death of the mother, were declared dependents without hearing

on parental fitness and without proof of neglect; such hearing and proof were required in the instance of children of a divorced or married couple. The Illinois Supreme Court had upheld this statutory scheme, from which the Petitioner appealed, asserting it was violative of equal protection.

Petitioner, in the case at bar, seemingly attempts to draw significant weight to the fact that the father in *Stanley* was undeniably the father of the children and that he had lived with and financially supported them all of their lives. While Petitioner can truthfully claim that he has resided with the minor child in the case at bar for a few years of his life (but not since the summer of 2003), there is little, if any, legal significance to these facts relative to Michigan's Paternity Act, nor does *Stanley* compel a different result.

In considering the Illinois statute under a procedural due process analysis, *Stanley* held that "[t]he private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, *absent a powerful countervailing interest*, protection." *Stanley*, 405 U.S. at 651 [emphasis added.] The powerful countervailing interest present in this case, and not present nor relevant in *Stanley*, is the presumption of legitimacy and its role in preserving the integrity of the family unit, repeatedly emphasized by the Michigan legislature and the Michigan Supreme Court. *See* fn. 6 and discussion supra at 6-11.

While relying on precedent to conclude that the Due Process Clause required a hearing for the particular father in *Stanley* (in the absence of a powerful countervailing interest), *Stanley*, too, emphasizes the "importance of the family" and the constitutional protections afforded to

protect the "integrity of the family unit." *Stanley*, 405 U.S. at 651. Michigan's Paternity Act, as interpreted by the Michigan Supreme Court in *Barnes*, does nothing more, nor nothing less.

In *Lehr v. Robertson*, 463 U.S. 248 (1983), the petitioner was the putative father of a child born out of wedlock. After the child was born, the mother married another man, who with the mother's acquiescence, later initiated an adoption proceeding and the Ulster County Family Court entered an order of adoption. Prior to the adoption proceedings, the putative father had never supported the child or offered to marry the mother, did not register his name in the "putative father registry" which would have ensured that he receive notice of the adoption proceeding, and was not otherwise entitled to receive notice of the adoption proceedings (as were some putative fathers.)

After the adoption proceeding had been initiated, but before the order was entered, the putative father brought a paternity action in Westchester County Family Court. His attorney also later brought a motion to stay the adoption proceedings pending the paternity proceedings, but the adoption order had already entered. The putative father, then, filed a petition to vacate the adoption order on the basis that it was obtained in violation of his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. New York's Supreme Court and Court of Appeals affirmed the Family Court's denial of such petition.

Lehr held that the adoption did not violate the petitioner's rights under either the Due Process or Equal Protection Clauses of the Fourteenth Amendment. *Id.* at 250. In so holding, *Lehr* noted the importance of a

biological father's connection with a child, but declined to extend due process protections to a putative father who had no established relationship with the child. The Petitioner seizes on this point to, again, highlight that he had a relationship with the minor child and so, distinguishing *Lehr* from this case, he should be entitled to due process protections.

Such a leap, however, disregards principles implicit to the *Lehr* ruling. Throughout *Lehr*, this Court emphasized the underlying importance of preservation of the "family unit" and the fact that constitutional protections favor even greater protection for certain "formal family relationships." *Lehr*, 463 U.S. at 257. Quoting from Justice Steven's dissent in *Caban v. Mohammed*, 441 U.S. 380 (1979), there is no way to disregard the significance that *Lehr* places on the "traditional" family unit, resulting from marriage.

> "The mother carries and bears the child, and in this sense her parental relationship is clear. The validity of the father's parental claims must be gauged by other measures. *By tradition, the primary measure has been the legitimate family relationship he creates with the child by marriage with the mother.* By definition, the question before us can arise only when no such marriage has taken place. In some circumstances the actual relationship between father and child may suffice to create in the unwed father parental interests comparable to those of the married father. Cf. *Stanley v. Illinois, supra*. But here we are concerned with the rights the unwed father may have when his wishes and those of the mother are in conflict, and the child's best interests are served by a resolution in favor of the mother. *It seems to me that the absence of a legal tie with*

> *the mother may in such circumstances appropriately place a limit on whatever substantive constitutional claims might otherwise exist by virtue of the father's actual relationship with the children. Ibid."*

Lehr, 463 U.S. at 260, fn. 16, citing *Caban*, 441 U.S. at 997 (Stevens, J., dissenting) [Emphasis added].

Even in their most generous construction, neither *Stanley,* nor *Lehr,* stand for the proposition that Petitioner has a fundamental liberty interest in his relationship with the minor child. Petitioner's reliance on these cases for that proposition is overstated and misplaced.

In *Michael H.*, writing for the majority, Justice Scalia noted that Michael, like the Petitioner in the case at bar, relied on these same cases to argue for legal recognition of a fundamental liberty interest *because* of an established parental relationship with his daughter. In dismissing such reliance, he writes:

> "We think that distorts the rationale of those cases. As we view them, they rest not upon such isolated factors but upon the historic respect – indeed, sanctity would not be too strong a term – traditionally accorded to the relationships that develop within a unitary family."

Michael H., 491 U.S. at 123. Petitioner has no fundamental liberty interest in his relationship with the minor child.

"Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Moore v. East Cleveland*, 431 U.S. 494 (1977). Protecting a putative father's relationship with a minor

child, however, is not part of this Nation's history and tradition.

Petitioner has failed to establish compelling reasons to grant his Petition for Writ of Certiorari, where the Michigan Supreme Court's decision supports this sanctity of the family and does not conflict with prior decisions of this Court. The Petition for Writ of Certiorari should be denied.

C. The Petitioner Has Failed to Establish a Compelling Reason To Grant His Petition, Where the Michigan Supreme Court Opinion Denying Petitioner Standing to Bring a Paternity Action Was Not a Denial of Equal Protection.

It is unclear from the Petitioner's pleadings exactly what he alleges about the Opinion, which violates the Equal Protection Clause. Certainly, the Petitioner has no legal capacity to represent the interests of the minor child and, therefore, the Petition should not be reviewed in the context of the minor child's legal interests.

Even then, however, *Michael H.* summarily held that the minor child, who claimed that her rights had been violated because unlike her mother and presumed father she could not rebut the presumption of legitimacy, had no equal protection claim. In quickly dispatching this argument, this Court held that the minor child was not "illegitimate" and was being treated in the same manner as all "legitimate" children.[9] *Michael H.*, 491 U.S. at 131.

[9] Generally, in considering statutory distinctions between "illegitimate" and "legitimate" children, this Court has adopted the "quasi-suspect" standard of judicial scrutiny, used in alleged "gender" discrimination

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Applying a "rational relationship" test to the constitutional challenge, this Court concluded that California's limitations on standing were rationally related to the legitimate state end of preventing third parties from undermining the integrity of the marital union. *Id.*

In the event that it is Petitioner's contention that the Michigan Supreme Court denied him equal protection, by denying him standing to file his paternity complaint while a legal father had that statutory opportunity, this argument must also fail.[10] While declining to specifically consider the claimed putative father's equal protection claim, *Michael H.* notes that "[w]here, however, the child is born into an extant marital family, the natural father's unique opportunity conflicts with the similarly unique opportunity of the husband of the marriage; and it is not unconstitutional for the State to give categorical preference to the latter." *Michael H.*, 491 U.S. at 129.

Further, this case differs significantly from *Stanley*, where a claimed putative father succeeded in his equal protection claim. In *Stanley*, the question was whether the distinction drawn by state law concerning the unavailability

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cases. *Matthews v. Lucas*, 427 U.S. 495 (1976). In order to survive judicial scrutiny under the Equal Protection Clause, such legal distinctions between "legitimate" and "illegitimate" children must "serve important governmental objectives and must be substantially related to achievement of those objectives." *Craig v. Boren*, 429 U.S. 190 (1976). Where, however, the minor child in *Michael H.* was not considered illegitimate, but was viewed to be treated in the same manner as all other legitimate children, i.e., she has the right to a filial relationship with her legal parents, this Court used a rational relationship test to her equal protection claims. *Michael H.*, 431 U.S. at 131.

[10] State laws are generally presumed valid against attack under the equal protection clause. *Lockport v. Citizens for Community Action*, 430 U.S. 259 (1976).

of a hearing to unmarried fathers, while being provided to all other parents (including married mothers, married fathers, and unmarried mothers) when custody was challenged, was constitutional. In the case at bar, there is no comparable and unwarranted legal distinction between those similarly factually situated. Finally, even applying a higher "quasi-suspect" standard for sake of argument, the Paternity Act, interpreted by the Michigan Supreme Court to deny the putative father (and all others like him[11]) standing to initiate a paternity complaint, where there had been no prior judicial determination concerning the child's "out of wedlock" status, clearly serves an important governmental objective, i.e., preservation of marriage and the sanctity of the family, and is substantially related to achievement of those objectives.

Petitioner has failed to establish compelling reasons to grant his Petition for Writ of Certiorari, where the Michigan Supreme Court's decision supports equal protection under the law and does not conflict with prior decisions of this Court. Accordingly, the Petition for Writ of Certiorari should be denied.

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[11] *See Department of Social Services v. Baayoun*, 204 Mich.App. 170, 514 N.W.2d 522 (1994) (default judgment of divorce did not determine that child was not issue of a marriage, so as to render child a "child born out of wedlock," and accordingly, *county department of social services, wife and child* were all denied standing to bring paternity action.); and *Coble v. Green*, 271 Mich.App. 382, 722 N.W.2d 898 (2006) (*mother* lacked standing to bring paternity action against alleged biological father, where child in question was not born out of wedlock and a court had already granted her husband equitable parent status, with same rights as natural father.) This uniform denial of standing, irrespective of particular connection to the minor child, suggests that perhaps a rational relationship test should be used to test the Petitioner's equal protection claims.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondent, Kim Kristine Jeı levine, respectfully requests that the Petition be denied.

Respectfully submitted,

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